# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION No. 17298 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 12659 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SILVANSBHAI K CHRISTY - Petitioner(s)**

**Versus**

**DIVISIONAL CONTROLLER G S R T C - Respondent(s)**

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**Appearance :**
MR JS BRAHMBHATT for Petitioner(s) : 1,
None for Respondent(s) : 1,
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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 19/09/2005**

**ORAL JUDGMENT**

1.Special Civil Application No. 12659 of 2005 has been filed by the State Road Transport Corporation challenging the legality of an Award dated 15.01.2005

passed by the Labourt Court, Nadiad by which the Labour Court was pleased to set aside the dismissal of the workman dated 21.08.1993 and was further pleased to provide that he will be get 25% backwages from the date of dismissal till he reaches the age of superannuation. On the other hand, Special Civil Application No. 17298 of 2005 has been filed by the employer concerned challenging the same Award by which the Labour Court withhold 75% of the backwages for the above mentioned period.

2. Workman was engaged as a driver by the State Transport Corporation. On the basis of the charge that he remained unauthorisedly absent from 19.05.1993 to 09.06.1993, a departmental inquiry was conducted against him. The disciplinary authority on 21.08.1993 ordered his dismissal. His First Appeal was rejected in the year 1994. He therefore raised an industrial dispute before the Labour in the year 1997. The Labour Court as noted earlier, allowed the reference in part and provided for 25% of wages to be paid from the date of dismissal till the date when the workman reached the age of superannuation, which was 11.05.2005.

3.In the impugned Award, the Labour Court observed that the workman had sent medical report indicating that he had back pain on account of which, he could not resume duties. The Labour Court found that the charges against the workman were not proved. The Award therefore provided for a portion of backwages as noted earlier.

4.Having perused the material on record, it appears that though the workman had participated during the course of the inquiry and produced a medical certificate of his back pain, the employer refused to accept the same as valid ground for remaining absent. Even after issuance of charge-sheet, the workman had not resumed duty till he was dismissed from service. Previously also, there were large number of similar instances, where he was found absent without authrised leave. It was therefore not proper on the part of the Labour Court to conclude that the workman had not committed any misconduct. Directions for payment of the backwages therefore cannot be justified. In the facts of the present case, however, when the charge-sheet indicated unauthorised absence between 19.05.1993 to 09.06.1993, for which period, the workman had offered a

plausible explanation considering the fact that the Labour Court had found it appropriate to set aside the dismissal Order and considering the fact that workman had reached the age of superannuation w.e.f. 11.05.2005, I do not find it proper to restore the Ord`er of dismissal. Therefore, while allowing the petition filed by the State Transport Corporation to the limited extent of interfering with the Award of the Labour Court to the extent that the same provides 25% of backwages for the intervening period, it is further clarified that the workman shall be deemed to have superannuated from service with continuity on the basis of his having reached 58 years of age on 11.01.2005 and pay him all post retiral benefits accordingly. The Award of the Labour Court shall stand modified accordingly.

5. Special Civil Application 12659 of 2005 is allowed in part with no orders as to costs. Special Civil Application No. 17298 of 2005 is rejected.

**(Akil Kureshi, J.)**

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